

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CITY OF MIDDLETOWN, ET AL.,

Petitioners,

CIVIL NO. 07-6572 (CLB)

-against-

PENCOR MASADA OXYNOL, LLC,

Respondent.

DECLARATION OF NICHOLAS A.
PASCALE, ESQ. IN OPPOSITION TO
PLAINTIFF'S MOTION TO REMAND
TO STATE COURT AND TO STRIKE
THE DECLARATION OF NICHOLAS
A. PASCALE, ESQ. IN OPPOSITION
TO PETITION

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I, NICHOLAS A. PASCALE, hereby depose and state as follows:

1. I am associated with the law firm of TARSHIS, CATANIA, LIBERTH, MAHON & MILLIGRAM, PLLC, attorneys for PENCOR MASADA OXYNOL, LLC ("PMO") in the above matter. I am conversant with the facts of this matter by way of my review of the files as they are maintained by this office.

2. I am admitted to practice law before this Court and respectfully make this declaration in opposition to the plaintiff's motion to remand the above-captioned action to State Court and to strike the declaration of NICHOLAS A. PASCALE, ESQ. (ECF Docket No. 4).

3. Annexed hereto as Exhibit "1" is a true and correct copy of the notice of removal filed by PMO on July 23, 2007 under Civil No. 07-CIV-6572 and all of the exhibits attached thereto.

4. Annexed hereto as Exhibit "2" please find the verified answer of PMO with counterclaims and objections and point of law dated July 23, 2007.

5. Annexed hereto as Exhibit "3" is a true and correct copy of the declaration of counsel in opposition to petition. This declaration was filed with this Court and served on counsel for the City of Middletown ("CITY") in opposition to the CITY's Petition filed in State Court pursuant to Article 75 of the New York Civil Practice Law and Rules dated July 6, 2007 and captioned, The City of Middletown,

et al. v. PenCor Masada Oxynol, LLC under index no. 2007-6035 (Supreme Court, Orange County). The points and arguments of law advanced in the declaration were made in opposition to the affirmation in support of Petition to stay arbitration and request for temporary stay by Michael G. Murphy, Esq. which was filed with the State Court contemporaneously with the petition and in support of the petition on or about July 6, 2007. A copy of Mr. Murphy's affirmation is annexed as Exhibit "A" to the notice of removal (Exhibit "1" hereto); *see, also*, ECT Docket No. "1" – "7".

6. The Pascale declaration the CITY seeks to strike is annexed hereto both in its original form and reformatted as a memorandum of law to address the objections of the CITY to the inclusion of legal arguments in a declaration format. This was done to provide an equivalent format to Mr. Murphy's law affirmation filed with the State Court. However, to make moot the form objection, a reformatted declaration in the form of a memorandum of law is attached hereto.

7. Annexed hereto as Exhibit "4" is a true and correct copy of the Rule 7.1 disclosure statement filed by PMO in the above-captioned matter.


8. Annexed hereto as Exhibit "5" is a true and correct copy of the notice of filing of notice of removal served upon the CITY by PMO regarding this matter.

9. Annexed hereto as Exhibit "6" is a true and correct copy of affidavits of service of the verified answer, declaration of counsel, notice of removal and notice of filing notice of removal upon the CITY by PMO.

10. Annexed hereto as Exhibit "7" is a true and correct copy of the reply to answer with counterclaims filed by the CITY served upon PMO.

11. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: Newburgh, New York
September 7, 2007



NICHOLAS A. PASCALE (NP-5766)